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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/898,255 | 07/03/2001 | Kevin Thomas | 88265-4040 | 1910 |

28765 7590 12/17/2004

WINSTON & STRAWN
PATENT DEPARTMENT
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WASHINGTON, DC 20005-3502

EXAMINER

ST CYR, DANIEL

ART UNIT PAPER NUMBER

2876

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 09/898,255 | Applicant(s) THOMAS ET AL | |
| | Examiner Daniel St.Cyr | Art Unit 2876 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6, 10-29 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 10-29 and 32-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/04 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 10-17, 21-24, and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright, US Patent No. 5,285,041, in view of Isaacman et al, US Patent No. 5,936,527.

Wright disclose an automated food vending machine comprising: a receptacle having at least one wall member that defines an enclosure, a food-forming product forming a package 40 present within the enclosure, and a tag (code) associated with the food-forming product, wherein the tag includes machine-readable information regarding the product which information is programmed at the manufacturing plant and includes instructions for controlling at least one of preparation of a food (see figure 1, col. 5, line 64 to col. 6, line 23, and col. 7, line 65 to col. 8, line 38), the tag is affixed to an exterior surface of the package (see col. 6, line 13), the tag

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includes a date of expiration in electronic form for the product (see col. 8, line 9), the food provides single/multiple-serving portions (frozen fried food could either be a single or multiple servings), the food-forming product is a powder, concentrate, or ready to eat (see col. 8, lines 1-7), and the package is composed of non-conductive material and the tag is located within the enclosure (of the machine) (see col. 8, line 42).

Wright discloses that the code could be bar, magnetic, optical, or other types of code, but fails to specifically disclose that the tag is an RFID reprogrammable tag.

Isaacman et al disclose a method and apparatus for locating and tracking document and other objects comprising: RFID tags a-n, wherein the tags are reprogrammable.

In view of Isaacman et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the vending system of Wright to employ reprogrammable RFID tags to store the products information. Such modification would enhance and facilitate communication between a reader and the tags and would provide greater storage to store more information so as to effectively identify the products and would more cost effective wherein the tags could be reprogrammed to update prices. Therefore, it would have been an obvious extension as taught by Wright.

Re claims 4, 10 and 23, Wright as modified by Isaacman et al fails to disclose or fairly suggest that tag is affixed to an interior surface of the package, the expiration date is from the date when the package is opened, or the package is composed of conductive material.

However, such limitation falls within the engineering design choice.

It would have been obvious for an artisan at the time the invention was made to conceal the tag inside the package to protect the tag from accidental liquid spillage, to set the expiration

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date when the package is opened or when the food was made according to the food product, and compose the package with conductive material for enhancing communication between the reader and the tag. Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al.

Re claim 14-17, Wright as modified by Isaacman et al fails to disclose or fairly suggests generating an error code to disable the dispenser and notifies an operator.

However, since the tag is read to obtain information from a data source, if the information in the tag cannot be verified or unreadable, a signal would be communicate to the operator in order to take the appropriate action. Regarding disabling the dispenser, the information is needed to operate the dispenser, therefore, the dispenser is disable until the information is obtained.

It would have been obvious for an artisan at the time the invention was made to generate an error code when the tag information cannot be verified or the tag is unreadable to notify the user for appropriate actions to process the food vending machine. Such modification would make the system more effective by providing means to rectify operation when problems occur.

Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al.

4. Claims 18-20 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright as modified by Isaacman et al as applied to claims 1-17 above, and further in view of Buckley et al, US Patent No. 5,285,041. The teachings of Wright as modified by Isaacman et al have been discussed above.

Wright as modified by Isaacman et al fails to disclose or fairly suggests that vending

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machine is connected to an external unit wherein the database is updated to schedule re-supplying of the vending machine.

Buckley et al disclose a computer controlled system for vending personalized products comprising a remote location 154 connected to the vending machine 10 wherein information is updated and communicated to the remote location scheduling re-supplying.

In view of Buckley et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the system Wright as modified by Isaacman et al to include a central location wherein information is communicated and updated to provide scheduled re-supply of products. Such modification would enhance the system performance by constantly making the products available to customers, which would make the vending machine more effective (more beneficial). Therefore, it would have been an obvious extension as taught by Wright as modified by Isaacman et al.

Response to Arguments

5. Applicant's arguments filed 10/26/04 have been fully considered but they are not persuasive. (see remarks).

REMARKS:

In response to the applicant's argument that the prior art fails to disclose a diluting agent, the examiner respectfully disagrees. Wright discloses controlling the powder level of the food (see col. 8, line 1), which implies that the powder has to be diluted before dispensing the food or beverage to the customer. The applicant's argument is not persuasive.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on 571-272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel St.Cyr
Primary Examiner
Art Unit 2876

A handwritten signature in black ink, appearing to read 'Daniel St.Cyr', is written over a horizontal line.

Ds
December 12, 2004